

**MICHAEL KANEFSKY, ANTHONY AND DINO BUTTINO, husband and wife, CHARLES AND DEBORAH BALARIS, and JOHN WARHOL, on behalf of themselves and all others similarly situated,**

**Plaintiffs,**

**vs.**

**TREX COMPANY, INC., a Delaware Corporation, TREX COMPANY, L.L.C. and EXXONMOBIL, a New Jersey Corporation,**

**Defendants.**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ESSEX COUNTY**

**DOCKET NO: L-7347-00**

**Civil Action**

**NOTICE OF CLASS ACTION DETERMINATION,  
CLASS DESCRIPTION, PENDENCY OF PROPOSED  
SETTLEMENT, AND HEARING ON SETTLEMENT**

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY. YOU MAY WISH TO CONSULT YOUR ATTORNEY CONCERNING THIS NOTICE. THE LAWSUIT WAS NOT FILED AGAINST YOU.**

**TO:** *All persons who purchased or had installed Trex®, Timbrex, or Rivenite wood-polyethylene composite building products between January 1, 1992 and July 31, 2004.*

This Notice describes the proposed Settlement of a pending class action lawsuit concerning whether Trex Company, Inc, Trex Company, LLC and/or ExxonMobil Corporation violated state and common law by negligently misrepresenting the characteristics of Trex, Timbrex, or Rivenite Products, by breaching contracts, by breaching implied or expressed warranties and/or by defrauding consumers between January 1, 1992 and July 31, 2004 (“the Class Period”). On August 24, 2004, Judge Donald W. Merkelbach of the Superior Court of New Jersey, Law Division, Essex County, preliminarily approved the proposed Settlement and ordered that notice be published for potential members of the class in this lawsuit.

**PLEASE READ THE CLASS DESCRIPTION, CONTAINED IN SECTION II A. OF THIS NOTICE, CAREFULLY TO SEE IF YOU QUALIFY FOR CLASS MEMBERSHIP. SEE SECTION III A. FOR HOW TO GET BENEFITS UNDER THE SETTLEMENT.**

The proposed Settlement is described in Section II of this Notice. If you do not request exclusion from the Class, as provided for in Section III. B. of this Notice, and if you complete and submit a valid Claim Form, you may have the opportunity to receive replacement Products under this Settlement, if it is finally approved by the Court.

The remainder of this Notice contains other information that is required by law. It (a) describes the lawsuit; (b) summarizes the terms of the Settlement and the fees that may be awarded to Plaintiffs’ attorneys; (c) tells you about a hearing on the Settlement and your rights; and (d) tells you how to obtain additional information.

## **I. THE LAWSUIT**

**A. Background.** The lawsuit is captioned *Kanefsky et. al v. Trex Co., Inc. et. al., Docket No: L-7347-00* (the “Action”) pending in the Superior Court of New Jersey, Law Division, Essex County (the “Court”). The plaintiffs and the Class in this lawsuit are represented by Marc B. Kramer, Law Offices of Marc B. Kramer, PC, 150 JFK Parkway, Suite 100 Short Hills, New Jersey 07078 (“Class Counsel” or “Plaintiffs’ Counsel”).

**B. Plaintiffs’ Allegations.** The Plaintiffs allege in the Action that Defendants have violated state and common law by negligently misrepresenting the characteristics of Trex, Timbrex, or Rivenite wood-polyethylene composite building products, by breaching contracts, by breaching implied or expressed warranties and/or by defrauding consumers in sale and promotion of these Products.

**C. Defendants’ Position.** While Defendants have agreed to the terms of this Settlement, Defendants denied and continue to deny liability on each and every claim asserted by the Plaintiffs. More specifically, Defendants deny and continue to deny all charges of wrongdoing or liability, on any theory, arising out of any conduct, statements, acts or omissions of Defendants, or their employees, agents or representatives, in connection with the Action, and deny that their Products are defective in any way.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

The following is a summary of the principal terms of the proposed Settlement. The full Stipulation of Settlement is on file with the Clerk of the Court, Superior Court of New Jersey, Law Division, Essex County (“Clerk of the Court”), where you may read and copy it at your own expense. The Stipulation of Settlement may be approved as modified by the Court without further notice.

**A. Description of the Defendants’ Class and Product.** The parties have agreed that the Settlement will cover defendants Trex Company, Inc, Trex Company, LLC and ExxonMobil Corporation (collectively referred to here as “Defendants”) and any

of their past or present officers, stockholders, directors, agents, employees, parents, affiliates, subsidiaries or divisions, and any of their successors, assigns, or legal representatives. On May 28, 2004, the Court certified, for settlement purposes only, a class of all claimants, for the Class Period January 1, 1992 through July 31, 2004, which includes those persons who purchased Trex, Timbrex, or Rivenite wood-polyethylene composite building products during the Class Period and all persons who subsequently own such Products (“Class Members”). As used herein, “Product” means an individual piece of Trex, Timbrex, or Rivenite wood-polyethylene composite building products.

**B. Class Recovery.** Pursuant to the terms of the Settlement, Defendants have agreed to (a) reform the warranty attached to Trex Products to remove the disclaimer of implied warranties; (b) discontinue all advertising claims that Trex Products do not require sealant and are “maintenance free”; (c) upon proper proof of claim, replace any Class Member’s Product that suffers from any checking, splitting, splintering, rotting or decay that has compromised the structural integrity of the Product such that it does not meet Trex’s code listing under NER-508, which is available on [www.trex.com/Universal/technical\\_info/NER508.pdf](http://www.trex.com/Universal/technical_info/NER508.pdf); (d) upon proper proof of claim, replace any Class Member’s Product that contains aluminum flakes greater than 1/8 of an inch in any direction that protrude from the surface of the Product; (e) upon proper proof of claim, replace any Class Member’s Product that has degraded in any spot of the Product more than ¼ of an inch from the nominal measurements set forth on a schedule which is available on [www.trex.com/legal/measurements.asp](http://www.trex.com/legal/measurements.asp); (f) upon proper proof of claim, replace any Class Member’s Product that has swelled more than ¼ of an inch from the nominal measurements set forth on a schedule which is available on [www.trex.com/legal/measurements.asp](http://www.trex.com/legal/measurements.asp); and; (g) upon proper proof of claim, provide for the cost of the replacement of any Product (including labor costs) that is replaced under the terms set forth above. However, Defendants’ obligation to replace any Product and/or to provide for any replacement costs, as set forth above, is expressly subject to the following exceptions, and Trex is not obligated to remedy any defect: (i) caused by the improper installation of the Product and/or failure to abide by Trex’s installation guidelines, including but not limited to improper gapping; (ii) caused by use of the Product beyond normal use, or in an application not recommended by Trex’s guidelines and/or local building codes; (iii) caused by any act of God (such as flooding, hurricane, earthquake, lightning, etc.), environmental conditions (such as air pollution, mold, mildew, etc.), or staining from foreign substances (such as dirt, grease, oil, etc.); (iv) caused by the movement, distortion, collapse, or settling of the ground or the supporting structure on which the Product is installed; or (v) caused by the improper handling, storage, abuse or neglect of the Product by Class Member or third parties.

**C. Evaluation by Class Counsel.** Plaintiffs’ counsel and counsel for Defendants have engaged in arm’s length negotiations with respect to settlement of the claims of the Class Members. The Plaintiffs recognize the uncertainty and the risk of the outcome of any litigation, especially complex litigation such as this, and the difficulties and risks inherent in the trial of such an action. Subject to the approval of the Court, the Plaintiffs desire to settle the claims of the Class Members against Defendants. Based on their review of the facts and the law at this stage of the proceedings, and their evaluation of the immediate benefits which the proposed Settlement makes available to the Class, Plaintiffs’ Counsel believes that the terms of the Settlement will provide substantial benefits to the Class Members, and believe the Settlement to be fair, reasonable and adequate, and that its approval is in the best interests of the Class.

**D. Costs and Attorneys’ Fees.** Defendants have agreed to pay the costs and expenses of publishing this Notice as well as any attorneys’ fees and costs the Court awards in this matter. Defendants will not reduce the amount that they pay Class Members for valid claims because of their agreement to pay Class Counsel’s attorney fees. Defendants agree that they will pay class counsel an award of attorneys’ fees subject to approval by the Court of \$1,750,000.

### **III. WHAT YOU CAN DO**

**A. Remain in the class.** If you fit the description above, and you have not requested exclusion from the Class as described in paragraph III. B. below, you will remain a Class Member and can obtain the benefits of the Settlement by following the claim procedure described below.

#### **IF YOU ARE A CLASS MEMBER DESCRIBED IN PARAGRAPH II. A. ABOVE, YOU WILL NEED TO COMPLETE AND MAIL THE CLAIM FORM ATTACHED HERETO TO OBTAIN ANY BENEFITS HEREUNDER.**

- (1) Claim Form Procedure.** The Claim Form must be fully completed and signed by the claimant. If the claimant’s original Trex warranty has expired, the claim form must be submitted within 35 days of the effective date of the Agreement. If the claimant’s original Trex warranty has not expired, the Claim Form must be submitted prior to the end of the warranty period applicable to the particular Class Member.
- (2) Review of Claims.** All claims shall be submitted to Trex, and the validity of those claims shall be determined by Trex. In the event that any class member disagrees with the validity determination by Trex, that class member, or Class Counsel, may appeal the Trex determination to a Claims Administrator within 30 days of receipt of the Trex determination.
- (3) Benefits to Claimants.** Upon proper proof of claim, Trex will replace any Class Member’s Product that suffers from checking, splitting, splintering, or rotting that has compromised the structural integrity of the Product such that it does not meet Trex’s code listing under NER-508, which is available on [www.trex.com/Universal/technical\\_info/NER508.pdf](http://www.trex.com/Universal/technical_info/NER508.pdf); or that contains aluminum flakes greater than 1/8 of an inch in any direction that protrude from the surface of the Product; or that has degraded in any spot of the Product more than ¼ of an inch from the nominal measurements set forth on a schedule which is available on [www.trex.com/legal/measurements.asp](http://www.trex.com/legal/measurements.asp); or that has swelled more than ¼ of an inch from the nominal measurements set

forth on a schedule which is available on [www.trex.com/legal/measurements.asp](http://www.trex.com/legal/measurements.asp). Trex will also provide the replacement cost (including labor costs) of any Product that is replaced.

- (4) **Sole Recovery.** The Product replacement, and the provision of any replacement cost set forth above will be the only benefits which a Class Member will be entitled pursuant to this Settlement. All Product replacement will be made after this Settlement has been finally approved.

**B. Request exclusion from the class.** If you do not want to participate in the Settlement, you can exclude yourself by mailing a piece of paper (1) stating you want to be EXCLUDED from the class and (2) listing your name, address, and telephone number. You must sign that paper and mail it by first-class mail, postmarked no later than November 19, 2004 to:

Class Counsel  
Marc B. Kramer, Esq.  
Law Offices of Marc B. Kramer, PC  
150 JFK Parkway, Suite 100  
Short Hills, New Jersey 07078

Counsel for the Defendants  
John B. Williams, Esq.  
Collier Shannon Scott  
Washington Harbour, Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108

If you exclude yourself from the Class, you (i) will not be permitted to participate in the Settlement described in this Notice, if it is approved; (ii) will not benefit from or be bound by a final judgment rendered in this Action; and (iii) may, if you wish, pursue on your own behalf whatever legal rights you may have. If you do not exclude yourself from the Class and the Settlement is approved, you will be bound by its terms and by any judgment entered as a result of the Stipulation, and will be permanently enjoined from prosecuting any of the claims released in this matter at any time in the future. If you do not exclude yourself from the Class, you may, if you wish, enter an appearance by an attorney of your own choice, but no attorney may participate in the Hearing unless his or her appearance has been filed in this matter and served on counsel for the parties on or before November 19, 2004.

**C. Submit an objection.** If you are a member of the Class who has not filed a timely request for exclusion from the Class, you may file a notice of your intent to object to the Settlement. You may present reasons why, in your view, the proposed Settlement should not be approved. Written notice of your objection must be: (a) filed with the Clerk of the Court, Superior Court of New Jersey, Law Division, Essex County and (b) sent by first-class mail, postmarked no later than November 19, 2004, to Class Counsel, Marc B. Kramer, Law Offices of Marc B. Kramer, PC, 150 JFK Parkway, Suite 100 Short Hills, New Jersey 07078, and counsel for Defendants, John B. Williams, Collier Shannon Scott, Washington Harbour, Suite 400, 3050 K Street, NW, Washington, DC 20007. Written objections must state your name, your address and telephone number; must state your objection; must be signed by you; and should indicate whether you desire to appear in person or through your attorney at the Hearing. Any Notice of Intent to Object must contain (a) a heading which refers to the Action; (b) a statement whether the objector intends to appear at the Hearing, either in person or through counsel, and if through counsel, identify counsel by name, address and phone number; (c) a detailed statement of the specific legal and factual bases for each and every objection; (d) a list of any witnesses and photocopies of exhibits which the objector intends to introduce at the Hearing. Any Class Member who does not ask to object in this manner waives the right to do so in the future, and shall be forever barred from making any objection to the Proposed Settlement.

#### **IV. FAIRNESS HEARING**

The Court has ordered that a final fairness hearing (the "Hearing") be held on December 10, 2004 at 9:30 AM (or such other time as the Court may, without further notice, direct), in Courtroom No. 912 of the Superior Court of New Jersey, Law Division, Essex County, 50 West Market Street, Newark, New Jersey 07102, before the Honorable Donald W. Merkelbach, or any judge sitting in his place. The purpose of the Hearing will be to determine whether the proposed Settlement is fair, reasonable and adequate, as well as in the best interests of the Class. If it is so determined, the Settlement will be finally approved by the Court and a judgment will be entered dismissing the Action on the merits, with prejudice and without leave to amend. If the Court disapproves the proposed Settlement, then the Action will continue and the rights and duties of the parties will be as if no Settlement had been reached. You do not need to appear at this Hearing unless you object to the settlement.

#### **V. EFFECT OF SETTLEMENT**

**A. Effect of Settlement Approval.** Unless you exclude yourself from the Class in the manner set forth in Section III. B., if the Final Approval Order approving Settlement is entered by the Court, you shall be deemed to have given Defendants, and any of their past or present officers, stockholders, directors, agents, employees, affiliates, subsidiaries or divisions, and any parent companies, successors, assigns, or legal representatives of the foregoing entities or persons, or any vendor, distributor or dealer who sells Trex (the "Released Parties") a Release. Under this Release, you, your heirs, executors, administrators, representatives, agents, successors and assigns, and any and all other Persons claiming through or by virtue of you, shall be deemed to have fully released, waived, relinquished and discharged, to the fullest extent permitted by law, all Released Claims (as defined below) that you may have against Released Parties. In addition, the Class Members shall be deemed to, and do hereby release and forever discharge, any other persons or entities from claims for which the Defendants could be liable to any Class Members arising out of or based on the design, manufacture, advertising, sale, or distribution of the Product.

**B. Release.** "Released Claims" means and includes in addition to all claims set forth in the Class Action First Amended Complaint and Jury Demand by Named Plaintiffs and the Settlement Classes any and all causes of action, claims, suits, proceedings, damages, equitable, legal and administrative relief, interest, attorneys' fees, expenses and costs, losses, demands,

obligations, rights, liens, entitlements, indemnities and contributions of any kind or nature whatsoever, whether known, unknown or presently unknowable, suspected or unsuspected, asserted or unasserted, contingent or fixed, liquidated or unliquidated, unmatured or matured, and whether based on federal, state or local statute or ordinance, regulation, contract, common law, or any other source that have been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth or referred to now or in the future by Plaintiffs or the Class Members against the Released Parties in the Action, or in any other court action, or before any administrative body, tribunal or arbitration panel, on the basis of, connected with, arising out of, or related to, in whole or in part Defendants' sale or representation of Trex, Timbrex or Rivenite wood-polyethylene composite building products to any Class Member. The Released Claims include, without limitation, all causes of action related to the above without regard to whether such cause of action is or could be brought pursuant to common law, New Jersey law or any other state or federal statute or regulation, including but not limited to state or federal statutes or regulations concerning unfair competition; unfair or deceptive methods of competition; unfair, deceptive, fraudulent, unconscionable, false or misleading conduct, acts, advertising or trade practices; or consumer protection; or under the common law of any state as a claim for breach of contract, breach of warranty, reformation of warranty, breach of fiduciary duty, fraud, unjust enrichment, misrepresentation (negligent or otherwise), tort, negligence, breach of constructive trust, breach of the implied covenant of good faith and fair dealing, or any other common law or statutory basis. In addition, the Class Members shall be deemed to, and do hereby release and forever discharge, any other persons or entities from claims for which the Defendants could be liable to any Class Members arising out of or based on the design, manufacture, advertising, sale, or distribution of the Product.

**VI. FOR FURTHER INFORMATION**

The references herein to the pleadings and other documents filed in the Action are only partial summaries. The complete text of these and other relevant documents are on file with the Clerk of the Court, Superior Court of New Jersey, Law Division, Essex County, where they are available for inspection and copying at your own expense during regular business hours. Any further questions that you or your attorney may have concerning this Notice should be directed to Class Counsel, Marc B. Kramer, Law Offices of Marc B. Kramer, PC, 150 JFK Parkway, Suite 100 Short Hills, New Jersey 07078.

**PLEASE DO NOT CONTACT DEFENDANTS, THE COURT, THE CLERK OF THE COURT OR THE JUDGE TO ASK ANY QUESTIONS ABOUT THIS LITIGATION.** They are not permitted to answer your questions.

Trex Decking Settlement Administrator  
PO Box 4349  
Portland, OR 97208-4349

MICHAEL KANEFSKY, ANTHONY AND  
DINO BUTTINO, husband and wife,  
CHARLES AND DEBORAH BALARIS, and  
JOHN WARHOL, on behalf of themselves  
and all others similarly situated,  
  
Plaintiffs,  
  
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TREX COMPANY, INC., a Delaware  
Corporation, TREX COMPANY, L.L.C. and  
EXXONMOBIL, a New Jersey Corporation,  
  
Defendants.

**PROOF OF PURCHASE AND  
CLAIM FORM FOR CLASS MEMBERS**

**IMPORTANT: IF YOUR ORIGINAL TREX WARRANTY HAS EXPIRED, THE CLAIM FORM MUST BE SUBMITTED WITHIN 35 DAYS OF THE EFFECTIVE DATE OF THE AGREEMENT. IF YOUR ORIGINAL TREX WARRANTY HAS NOT EXPIRED, THE CLAIM FORM MUST BE SUBMITTED PRIOR TO THE END OF THE WARRANTY PERIOD APPLICABLE TO THE PARTICULAR CLASS MEMBER.**

**PART A: CLASS MEMBER NAME(S), ADDRESS(ES), TELEPHONE & EMAIL INFORMATION**

*Please provide the following information:*

Name of  
Property Owner(s): \_\_\_\_\_

Name of  
Co-Owner(s): \_\_\_\_\_

Property  
Address: \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State Zip

Mailing  
Address: \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State Zip

Telephone/Email: \_\_\_\_\_  
Day

\_\_\_\_\_ Cell

\_\_\_\_\_ Email

**PART B. PRODUCT AND INSTALLATION INFORMATION**

*Please provide the following information:*

- Attach a photograph that clearly shows the basis for which you are making a claim, as described in the notice.
- Attach proof of purchase and / or installation. Examples of acceptable proof are **receipts** indicating product purchase or an **invoice** indicating product purchase and / or installation.

\_\_\_\_\_  
Description of attached proof of purchase and / or installation

Type of  
Product Purchased \_\_\_\_\_

\_\_\_\_\_  
Date of Purchase

Color  
of Product \_\_\_\_\_

\_\_\_\_\_  
Date of Installation

**PART C. CERTIFICATION**

*(must be completed by all owners)*

I certify under penalty of perjury that to the best of my knowledge, information and belief, the information on this Claim Form (and additional sheets) is true and correct and that no claim has been made previously with respect to this product.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Signature of Co-Owner

\_\_\_\_\_  
Date

**RETURN THIS COMPLETED CLAIM FORM, WITH REQUIRED ATTACHMENTS TO:  
TREX DECKING SETTLEMENT ADMINISTRATOR  
PO BOX 4349  
PORTLAND, OR 97208-4349**